

OFFICE OF LOCAL PUBLIC HEALTH

ADMINISTRATIVE ADVISORY

2012-001

SUBJECT: Model *Public Health Nuisance Code of New Jersey (1953)*

EFFECTIVE DATE: Immediate, 20 JUN 2012

EXPIRATION DATE: None

AUTHORITY: *State v. Golin*, 363 N.J. Super. 474, 484 (App. Div. 2003)

BACKGROUND: *Public Health Practice Standards of Performance for Local Boards of Health in New Jersey*, N.J.A.C. 8:52 (*Practice Standards*) contains an *Appendix* entitled *Programmatic Guidelines for Best Practices*. The *Appendix* provides local health agencies with guidelines for conducting environmental health activities, communicable disease activities, maternal and child health activities, adult health services, and health education/health promotion. Part I of the *Appendix*, *Environmental Health Activities*, contains guidelines for public health nuisances. The *Appendix* requires local health agencies to investigate public health nuisances in accordance with State laws and local ordinances. The *Appendix* requires that local public health nuisance ordinances be at least equivalent to the *Public Health Nuisance Code of New Jersey (1953)*.

The *Public Health Nuisance Code (Code)* was originally approved by the Department on September 16, 1953 for adoption by reference by local boards of health. Guidance at the time suggested that it be adopted without alteration, or if so desired, any numbered section or paragraph may be deleted therefrom, but no substitute section or paragraph may be added. The Code could then be adopted by reference pursuant to the *Public Health and Sanitation Codes Adoption by Reference Act*, N.J.S.A. 26:3-69.1 – 69.6. It was also noted that the *Public Health Nuisance Code* is a general code and that specific codes may be more suitable for local adoption in municipalities having the necessary enforcement facilities.

The *Code* contained ten sections: I – definitions; II – nuisances defined and prohibited; III – proper heating of apartments; IV – prohibition of certain noises or sounds; V – prohibited lease or rental of certain buildings; VI – spitting prohibited; VII – inspection of premises; VIII – abatement of nuisances; IX – recovery of costs by board of health; and X -- who can enforce the *Code*.

The New Jersey Superior Court, Appellate Division, has held that sections 2.1(a) and (b) of the *Public Health Nuisance Code of New Jersey (1953)* violate due process because they are unconstitutionally vague and set forth unascertainable standards that encourage arbitrary and discriminatory enforcement. *State v. Golin*, 363 N.J. Super. 474, 484 (App. Div. 2003); *Guidi v. City of Atlantic City*, 286 N.J. Super. 243, 245 (App. Div. 1996). In *Golin*, the defendant was convicted of maintaining a public nuisance because she refused to cut tree branches obstructing a public sidewalk in East Windsor Township. In *Guidi*, the defendant was issued a summons charging that she violated the Atlantic City municipal code by feeding pigeons, thus causing an accumulation of bird feces on buildings and vehicles on a residential street.

In both cases, the local health agencies had adopted ordinances quoting directly from the *Public Health Nuisance Code of New Jersey (1953)*:

2.1 “The following matters, things, conditions or acts and each of them are hereby declared to be a nuisance and injurious to the health of the inhabitants of this municipality:

- (a) Any matter, thing, condition or act which is or may become detrimental or a menace to the health of the inhabitants of this municipality.
- (b) Any matter, thing, condition or act which is or may become an annoyance, or interfere with the comfort or general well-being of the inhabitants of this municipality.”

The court found in both cases that this language was unconstitutionally vague and violative of due process. Specifically, “both [provisions] set forth unascertainable standards that encourage arbitrary and discriminatory enforcement.” *Golin, supra*, 363 N.J. Super. at 484. It is clear that the court determined that the language being advocated by the Department did not pass constitutional muster.

By defining public nuisance too broadly and vaguely, the *Public Health Nuisance Code of New Jersey (1953)* does not provide municipal residents with sufficient notice to allow them to conform their conduct.

Practice Standards is set to expire on August 11, 2015. The Department has already begun preliminary work on reviewing and revising the rules. Upon readoption, these references to the *Public Health Nuisance Code of New Jersey (1953)* will be removed.

NEEDED ACTION: As such, local health agencies should review their ordinances to ensure that they are consistent with the above-referenced decisions and no longer rely on and use sections 2.1 (a) and (b) of the *Code*. Municipalities should also adopt their own ordinances which address issues specific to their needs.

ENFORCEMENT PROCEDURE: Local health agencies should no longer use sections 2.1 (a) and (b) of the *Public Health Nuisance Code of New Jersey (1953)*.